

## **Instructions**

### **Surplus Monies Action (In Rem Foreclosures)**

1. A **Notice of Claim** must be filed in the In Rem Action. The Notice of Claim must contain the same caption and index number as the In Rem Action, and **MUST INCLUDE** the serial Number of the Parcel.
2. Request a **Certificate of Claims to the Surplus Monies** from the County Clerk (Actions & Proceedings) pursuant to RPAPL §1355. The Certificate of Claims will list any other parties who have filed a Notice of Claim for Surplus Monies or Notice of Appearance in the In Rem Action, against the specific parcel (identified by Serial Number). You must serve a copy of the Notice of Motion and Motion on all parties filing a Notice of Claim or Notice of Appearance.
3. You must obtain a **Certificate of Amount of Money on Deposit** from the County Comptroller (with whom the money is deposited) showing the amount of money (including interest) being held and submit the certificate with your Motion.
3. A **Notice of Motion and Motion for an Order to Confirm the Sale and for Distribution of / or Directing Release and Payment of Surplus Monies** must be filed. Use the same caption and index number as in the In Rem Action – The papers **MUST** include the Serial Number of the Parcel. Attached to your papers should be the following:
  - a) An Affidavit in Support of the Motion;
  - b) A limited (stub) search of the property commencing at the date that the Claimant/former Fee Owner took title to identify lien holders (other judgment creditors).  
A search may be ordered from a title search company;
  - c) The Certificate of Claims from the County Clerk;
  - d) The Certificate of Amount of Money on Deposit from the Comptroller;

e) A Copy of the Judgment of Foreclosure and Sale; and

e) Proof of service upon all lien holders, if any exist. A copy of the Affidavit(s) of Service must be submitted with the Notice of Motion and Motion for an Order to Confirm Sale and for Distribution of / or Directing Release and Payment of Surplus Monies. The original Affidavit(s) of Service must be filed in the Clerk's Office in Actions & Proceedings.

Be sure to retain a copy of all papers for your own records. The Clerk's Office will NOT make copies.

4. If the Court determines that a referee must be appointed, an Order of Reference (appointing a Referee) must be submitted to the Court. The County (as existing Referee in the Tax Foreclosure action) is not required to file a Report of Referee (See County Tax Act § 11-26.0). If there are no other Notices of Claim or Notices of Appearance, the Court will not appoint a Referee.

If another referee is appointed by the Court, the Referee will file a Report (Referee's Report) with the Court, certifying the appearances in the In Rem Foreclosure Action and determining the priority of creditors.

5. You must prepare and submit to the Court an (proposed) Order directing the monies to be paid to you.

6. Once the Order is signed and entered by the County Clerk you must obtain a certified copy of the order from the County Clerk's Office and file it with the County Comptroller's Office (with whom the money is deposited). A certified copy will cost \$5.00 plus \$1.25 per page over 4 pages. The Comptroller's Office will mail you a check for the money they are holding less the Comptroller's administrative fee (currently 2%).